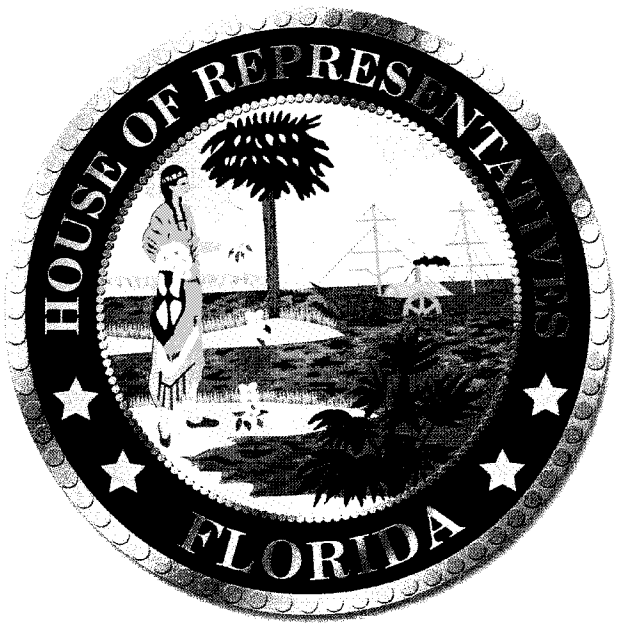

JUDICIARY COMMITTEE

MEETING PACKET

Wednesday, March 15, 2006
8:15 a.m. – 11:00 a.m.
Morris Hall
(17 HOB)

Allan G. Bense
Speaker

David Simmons
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Judiciary Committee

Start Date and Time:	Wednesday, March 15, 2006 08:15 am
End Date and Time:	Wednesday, March 15, 2006 11:00 am
Location:	Morris Hall (17 HOB)
Duration:	2.75 hrs

Consideration of the following proposed committee bill(s):

PCB JU 06-06 -- Rules of Construction

Consideration of the following bill(s):

HB 113 CS Judges by Negron
HB 129 Lawful Ownership, Possession, and Use of Firearms and Other Weapons by Baxley
HB 371 CS Cancer Drug Donation Program by Harrell
HB 849 Regulation of Court Interpreters by Flores
HB 1099 Court Actions Involving Families by Planas
HB 7019 Mediation by Civil Justice Committee

NOTICE FINALIZED on 03/13/2006 16:09 by Williams.Tanesha

Florida House of Representatives

Judiciary Committee

Allan G. Bense
Speaker

David Simmons
Chair

COMMITTEE ON JUDICIARY

Morris Hall (17 HOB)
March 15, 2006
8:15 a.m. – 11:00 a.m.

Agenda

1. **Call to order**

2. **Roll call**

3. **Welcome and opening remarks**

   Representative David Simmons, Chair

4. **Consideration of the following proposed committee bill:**

PCB	Sponsor	Title
PCB JU 06-06	Judiciary	Rules of Construction

5. **Consideration of the following bills:**

Bill	Sponsor(s)	Title
HB 113 CS	Negron	Judges
HB 129	Baxley	Lawful Ownership, Possession, and Use of Firearms and Other Weapons
HB 371 CS	Harrell	Cancer Drug Donation Program
HB 849	Flores	Regulation of Court Interpreters
HB 1099	Planas	Court Actions Involving Families
HB 7019	Mahon	Mediation

6. Closing remarks

Representative David Simmons, Chair

7. Adjournment

PCB JU 06-06

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JU 06-06 Rules of Construction
SPONSOR(S): Judiciary Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee		Hogge	Hogge
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This House Joint Resolution proposes to amend Article X, Section 12, of the State Constitution, relating to rules of construction, to prohibit the application of the maxim "expressio unius est exclusio alterius" in interpreting the extent of political power vested in the legislative branch by the people. This maxim holds that "the expression of one thing is the exclusion of another." As far back as 1905, the Florida Supreme Court stated that the maxim should be applied "with great caution to the provisions of an organic law relating to the legislative department...." This sentiment has been echoed in the courts of other states, although many appear to have permitted its application in various circumstances such as qualifications for election to a constitutional office but not in others such as regulating the taxing power of the Legislature. In a recent case, the Florida Supreme Court disapproved of a decision of the 1st District Court of Appeal by applying this maxim to declare Florida's school voucher program unconstitutional. The North Carolina Supreme Court and the California Court of Appeal appear to be examples of courts that have refused to apply this doctrine when interpreting their constitution if not in all cases, then in all but what appear to be very rare circumstances.

Within our constitutional framework, the people are sovereign and the source of all governmental power. The Florida Constitution (like other state constitutions) is the way in which the people have chosen to allocate and regulate their sovereign governmental power not exclusively granted to the federal government in the United States Constitution. This is accomplished primarily by "vesting" the legislative, executive and judicial powers in certain defined offices and collegial bodies. Most other constitutional provisions serve to direct and/or limit the application of these vested powers. Therefore, the bulk of powers exercised by the three branches of government are vested powers; they do not arise out of specific grants of power. Through the Florida Constitution, the people have vested legislative authority in the Legislature with such exceptions as the people have clearly delineated. The legislative branch looks to the Constitution not for sources of power but for limitations upon power.

In contrast, the federal constitution is a constitution of delegated powers, having only those specific powers given to it in the Constitution and those "necessary and proper" to carry out those powers. All other sovereign governmental powers are reserved to the States.

The Division of Elections within the Department of State estimates that the cost of compliance for a proposal with a ballot summary of 75 words or less would be approximately $50,000.

This is a joint resolution which requires passage by a 3/5 vote of each chamber.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This proposal does not directly implicate the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Proposed Changes

This House Joint Resolution proposes to amend Article X, Section 12, of the State Constitution, relating to rules of construction, to prohibit the use of the maxim "expressio unius est exclusio alterius" in interpreting the extent of political power vested in the legislative branch by the people. This maxim holds that "the expression of one thing is the exclusion of another."

Background

Constitutional Power and Authority: Contrasting the Federal and State Constitutions

The federal constitution is a constitution of delegated powers, "having only those specific powers given to it in the Constitution,"[1] and those "necessary and proper" to carry out the enumerated powers. All other powers are reserved to the states.[2]

Within our constitutional framework, the people are sovereign and the source of all governmental power. The Florida Constitution (like other state constitutions) is the way in which the people have chosen to allocate and regulate their sovereign governmental power not exclusively granted to the federal government in the United States Constitution and acts as a limitation on governmental powers. This is accomplished primarily by "vesting" the legislative, executive and judicial powers in certain defined offices and collegial bodies. Most other constitutional provisions serve to direct and/or limit the application of these vested powers. Therefore, the bulk of powers exercised by the three branches of government are vested powers; they do not arise out of specific grants of power.

Through the Florida Constitution, the people have vested legislative authority in the Legislature with such exceptions as the people have clearly delineated.[3] "The legislative branch looks to the Constitution not for sources of power but for limitations upon power."[4] The authority of the legislative branch is "plenary" (i.e., "absolute") in the legislative field.[5] It is limited only by the "express and clearly implied provisions of the federal and state constitutions."[6] "In other words, the Legislature may exercise any lawmaking power that does not either expressly or by necessary implication conflict with any other provision of the State or Federal Constitution."[7]

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[1] John Cooper and Thomas Marks Jr., eds., *Florida Constitutional Law: Cases and Materials, 2d Ed.* (1996), at 3.
[2] U.S. Const. art. X.
[3] Fla. Const. art. III, s. 1.
[4] *State ex. rel. Green v. Pearson*, 14 So.2d 565 (Fla. 1943).
[5] 6 Fla.Jur., s. 119. See also, *County Board of Education of Russell County v. Taxpayers and Citizens of Russell County*, 163 So.2d 629, 634 (Ala. 1964). ("There are no limits to the legislative power of state governments save those written into its constitution. All that the legislature is not forbidden to do by the organic law, state or federal, it has full power to do.")
[6] 6 Fla.Jur., s. 119.
[7] *Id.*

The Application of the Maxim *"Expressio Unius Est Exclusio Alterius"* in Constitutional Interpretation

It is a generally accepted principle that interpreting a constitution, as any written document, only becomes necessary when the plain meaning cannot be ascertained and the intent is ambiguous. Further, that in construing a constitution, effect should be given to every part of the document and every word and where possible, conflicting provisions should be harmonized. There are numerous rules of construction utilized by the courts. The Florida Constitution sets forth several of these such as "(t)itles and subtitles shall not be used in construction."[8]

One such rule of construction is *"expressio unius est exclusio alterius;"* that is, "the expression of one thing is the exclusion of another." For example, if the constitution included or "expressed" specific disqualifications for holding elective office, then applying this maxim, the exclusion of any other disqualifications would be implied. The Ohio Supreme Court used the following illustration to describe the way in which the rule operates when applied in this context:

> Thus, when the General Assembly has full power to legislate in a field that has natural subclasses (A, B, C, D, etc.) and a constitutional provision puts restrictions on subclasses A, B, and C, that does not mean (under application of the doctrine of expressio unius est exclusio alterius) that the constitutional provision has removed the power to legislate as to subclass D. Rather, it means the power to legislate as to subclass D is not restricted.[9]

This maxim generally does not apply with the same force to a constitution as to a statute ("it should be used sparingly" in construing the constitution)[10] and particularly in regards to the legislature.[11]

Florida

As far back as 1905, the Florida Supreme Court stated that the maxim should be applied "with great caution to the provisions of an organic law relating to the legislative department...."[12] This sentiment has been echoed in the courts of other states.[13]

Although Florida courts, like those of other states, have cautioned against its use, they have not prohibited its outright use in construing provisions of the Florida Constitution.[14] Most recently, the

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[8] Fla. Const. art. X, s. 12(h).

[9] *State ex. rel. Jackman v.Court of Common Pleas of Cuyahoga County*, 224 N.E.2d 906, 910 (Ohio 1967). ("The judiciary must proceed with much caution in applying the...maxim (expressio unius est exclusio alterius) to invalidate legislation."

[10] 6 Fla.Jur., s. 69.

[11] *Id.*

[12] *State ex. rel. Moodie v. Bryant,* 39 So. 929, 956 (Fla. 1905). See also, *Marasso v. Van Pelt*, 81 So. 529, 530 (Fla. 1919) (Per *Marasso*: "Organic limitations upon the authority of the Legislature to exercise the police power of the state...should not be implied by invoking the rule of construction "Expressio unius est exclusion alterius," or otherwise, unless it is necessary to do so in order to effectuate some express provision of the Constitution."); *Pine v. Com.*, 93 S.E.2d 652 (Va. 1917) ("The principle of the maxim...should be applied with great caution to those provisions of the Constitution which relate to the legislative department.")

[13] *State ex. rel. Jackman, supra* note 9, at 910 (Per State ex. rel. Jackman, "The judiciary must proceed with much caution in applying the...maxim (expressio unius est exclusio alterius) to invalidate legislation."); *Earhart v. Frohmiller*, 178 P.2d 436 (Az. 1947) and 16 Am.Jur.2d Constitutional Law s. 69.

[14] The Florida Supreme Court has stated that "the principle is well established that, where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it....Therefore, when the Constitution prescribes a manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision. See *Weinberger v. Board of Public Instruction*, 112 So. 253, 256 (Fla. 1927). In *Holmes I, infra* note 15, the 1st DCA distinguished *Weinberger* in that the constitution forbade any action other than that specified in the constitution, and the action by the Legislature defeated the purpose of the constitutional provision....(here the court said) in this case, nothing in (the constitutional provision at issue) prohibits the Legislature from allowing the well-delineated use of public funds for private school

Florida Supreme Court, over sharp dissent, disapproved of a decision of the 1st District Court of Appeal[15] by applying this maxim to declare legislation creating a school voucher program unconstitutional.[16] The Supreme Court read the constitutional provision as a limitation on the power of the Legislature—as an exclusive means for accomplishing a duty contained in the Constitution. The majority defended its use of this maxim, believing the constitutional provision at issue "provides a comprehensive statement of the state's responsibilities regarding the education of its children."[17] In dissent, Justice Bell found the language of the constitutional provision at issue to be "plain and unambiguous" and, therefore, "wholly inappropriate for (the) court to use a statutory maxim such as *expressio unius est exclusio alterius* to imply such a proscription."[18] He believed its use in this case "significantly expands this Court's case law in a way that illustrates the danger of liberally applying this maxim."[19] He wrote:

> In accord with courts across this nation, this Court has long recognized that the *expressio unius* maxim should not be used to imply a limitation on the Legislature's power unless this limitation is absolutely necessary to carry out the purpose of the constitutional provision....We have repeatedly refused to apply this maxim in situations where the statute at issue bore a "real relation to the subject and object" of the constitutional provision.[20]

Other States

As mentioned previously, like Florida, virtually all states appear to caution against the use of this maxim in constitutional construction,[21] although many appear to permit its application in various circumstances such as qualifications for election to a constitutional office but not in others such as regulating the taxing power of the Legislature.[22] For example, the Colorado Supreme Court, while accepting the principle that "all power which is not limited by the constitution is vested in the people and may be exercised by them via their elected representatives so long as the constitution contains no prohibition against it," nonetheless applied the maxim as the rationale for the rule that "the fact that the framers of the state constitution chose to specify the qualifications for this office limits, by implication, the legislature's power to impose additional qualifications."[23] The Louisiana Supreme Court has held that

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education...." In *Taylor v. Dorsey*, 19 So.2d 876 (Fla. 1944), the Florida Supreme Court found the principle enunciated in *Weinberger* inapplicable because the statutory provision did not violate the "primary purpose" of the constitutional provision. See *infra*, note 16.

[15] *Bush v. Holmes (Holmes I)*, 767 So.2d 668 (1st DCA 2000).

[16] *Bush v. Holmes,* 919 So.2d 392 (Fla. 2006). The court declared s. 1002.38, F.S. (2005), unconstitutional. The voucher program is entitled the "Opportunity Scholarship Program." In doing so, the majority distinguished the case of *Taylor v. Dorsey*, 19 So.2d 876 (Fla. 1944), cited by Justice Bell in his dissent in opposition to the application of "expressio unius est exclusio alterius" in this case.

[17] *Bush, supra* note 16, at 408.

[18] *Id.*, at 415.

[19] *Id.*, at 420.

[20] *Id.*, at 422. Citing *Marasso v. Van Pelt*, 81 So.529, 530 (Fla. 1919) and *Taylor v. Dorsey*, *supra* note 16.

[21] See *supra* note 13.

[22] *Mercantile Incorporating Co. v. Junkin*, 123 N.W. 1055 (Neb. 1909) ("The maxim...does not apply in the construction of constitutional provisions regulating the taxing power of the Legislature.") See also, *Kramar v. Bon Homme County*, 155 N.W.2d 777 (S.D. 1968);

[23] *Reale v. Board of Real Estate Appraisers*, 880 P.2d 1205, 1208 (Colo. 1994). The court placed great weight on the characterization of the right involved as a "fundamental right reserved to the people—the right to vote for representatives of their choice—(and that the right) would hinge not on constitutional guarantees, but on the General Assembly's willingness to abstain form imposing additional qualifications or holding constitutional offices." Also, in Colorado, the framers of the constitution "did express their intent to permit the legislature to fix additional qualifications for certain offices...." However, the dissent noted that where the constitution strips the General Assembly of power, it does so expressly. The Court sided with the majority of states that had held that "where the Constitution establishes specific eligibility requirements for a particular constitutional office, the constitutional criteria are exclusive.") In this regard, see also *Thomas v.* State, 58 So.2d 173 (Fla. 1952). (Per *Thomas*: "The principle is well established that where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it. Therefore, when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision.") Regarding the application of the maxim for a different policy

"(i)n construing a Constitution, resort may be had to (the) well-recognized rule of construction contained in the maxim "expressio unius est exclusio alterius...."[24]

In contrast, the North Carolina Supreme Court and the California Supreme Court[25] appear to be examples[26] of courts that have refused to apply this doctrine when interpreting their constitution if not in all cases, then in all but what appear to be very rare circumstances. As stated by the North Carolina Supreme Court in embracing the California rationale:

> This doctrine flies directly in the face of one of the underlying principles of North Carolina constitutional law. As Justice Mitchell himself stated for the Court in (the) *Preston* (case):
>
> > "[I]t is firmly established that our State Constitution is not a grant of power.... All power which is not expressly limited by the people in our State Constitution remains with the people, and an act of the people through their representatives in the legislature is valid unless prohibited by that Constitution....This fundamental concept, that a state constitution acts as a limitation, rather than a grant of power, is certainly not unique to North Carolina. The California Court of Appeal, for example, recently reviewed the basic principles of California constitutional law as set out in previous decisions of the California Supreme Court.[27] The following passage from that opinion could serve just as easily as a primer for North Carolina constitutional law: Unlike the federal Constitution, which is a grant of power to Congress, the California [North Carolina] Constitution is a limitation or restriction on the powers of the Legislature. Thus, the courts do not look to the Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited. Further, "[i]f there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used." Consequently, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. In other words, the doctrine of *expressio unius est exclusio alterius*...is inapplicable."[28]

C. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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area, see *State v. Gilman*, 10 S.E. 283 (W.Va.) in which the West Virginia Supreme Court applied the doctrine in invalidating a statutory law relating to the sale of liquor.

[24] *Stokes v. Harrison*, 155 So.2d 373 (La. 1959). See also, *Collingsworth County v. Allred*, 40 S.W.2d 13 (Tx. 1931).

[25] *Dean v. Kuchel*, 230 P.2d 811, 813 (Cal. 1951) ("Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms.").

[26] See also, *Eberle v. Nielson*, 306 P.2d 1083, 1086 (Idaho 1957) ("There flows from this fundamental concept, as a matter of logic in its application, the inescapable conclusion that the rule of expressio unius est exclusio alterius has no application to the provisions of our State Constitution."); *Penrod v. Crowley*, 356 P.2d 73, 80 (Idaho 1960) ("The rule...does not apply to provisions of the state constitution."); *State ex. rel. Attorney General v. State Board of Equalization*, 185 P. 708, 711 (Mont. 1919) ("The maxim...cannot be made to serve as a means to restrict the plenary power of the Legislature, nor to control an express provision of the Constitution."); *Earhart v. Frohmiller*, 178 P.2d 436 (Az. 1947) ("(i)t cannot be made to restrict the plenary power of the Legislature."); *State ex. rel. McCormack v. Foley*, 118 N.W.2d 211 (Wis. 1962); *Cathcart v. Meyer*, 2004 WY 49 (Wyo. 2004) (rule is "inapplicable in construing constitutional provisions.")

[27] *County of Fresno v. State*, 268 Cal.Rptr. 266, 270 (Cal. Ct. App. 1990).

[28] *Baker v. Martin*, 410 S.E.2d 887, 891 (N.C. 1991).

None.

2. Expenditures:

Art. XI, s. 5, of the Florida Constitution, requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. The Division of Elections within the Department of State estimates that the cost of compliance for a proposal with a ballot summary of 75 words or less would be approximately $50,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply to House Joint Resolutions.

2. Other:

Article XI, Section 1 of the State Constitution provides the Legislature with the authority to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Not applicable.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 12 of Article X of the State Constitution; revising rules of construction to be used when interpreting the extent of political power vested in the legislative branch to provide that the expression of one thing does not imply the exclusion of another.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 12 of Article X of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE X

MISCELLANEOUS

SECTION 12. Rules of construction.—

Unless qualified in the text the following rules of construction shall apply to this constitution.

(a) "Herein" refers to the entire constitution.

(b) The singular includes the plural.

(c) The masculine includes the feminine.

(d) "Vote of the electors" means the vote of the majority of those voting on the matter in an election, general or special, in which those participating are limited to the electors of the governmental unit referred to in the text.

(e) Vote or other action of a legislative house or other

governmental body means the vote or action of a majority or other specified percentage of those members voting on the matter. "Of the membership" means "of all members thereof."

(f) The terms "judicial office," "justices" and "judges" shall not include judges of courts established solely for the trial of violations of ordinances.

(g) "Special law" means a special or local law.

(h) Titles and subtitles shall not be used in construction.

(i) In interpreting the extent of political power vested in the legislative branch by the people, the expression of one thing does not imply the exclusion of another.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENTS

ARTICLE X, SECTION 12

RULES OF CONSTRUCTION.--Proposing a revision to the rules of construction when interpreting the State Constitution. The revision prohibits the use of the maxim expressio unius est exclusion alterius when interpreting the extent of political power vested in the legislature by the people. This maxim stands for the proposition that the expression of one thing does not imply the exclusion of another.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 113 CS Judges
SPONSOR(S): Negron and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 364, SB 766

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Appropriations Committee	4 Y, 0 N, w/CS	Brazzell	DeBeaugrine
2) Judiciary Committee		Thomas	Hogge
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

The Supreme Court issued Order No. SC05-2120, dated December 15, 2005, certifying the need for a total of 66 additional appellate, circuit, and county judges.

HB 113 CS establishes 2 new appellate judgeships, 24 new circuit judgeships, and 40 new county court judgeships, for a total of 66 new judgeships. The new judgeships will be established in two phases, the first beginning September 1, 2006, and the second beginning December 1, 2006.

The estimated annual recurring cost to the state is $16.1 million. For Fiscal Year 2006-07, the CS provides recurring appropriations for Fiscal Year 2006-07 of $11.6 million and nonrecurring appropriations of $385,448. The CS also authorizes 149.0 FTE and associated rate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

The Supreme Court of Florida issued SC05-2120 on December 15, 2005, in regard to the Certification of Need for Additional Judges. In the certification, the court recommended 2 new appellate judges, 40 new circuit judges, and 24 new county court judges, for a total of 66 new judges.

HB 113 CS establishes, effective September 1, 2006:

- 2 new appellate judgeships, one each in the 2nd and 4th District Courts of Appeals.
- 20 new circuit judgeships: 1 each in the First, Second, Fourth, Sixth, Seventh, Ninth, Tenth, Twelfth, Fourteenth, Seventeenth, Eighteenth, and Nineteenth Judicial Circuits; and 2 each in the Fifth, Eleventh, Thirteenth, and Twentieth Judicial Circuits.
- 11 new county court judgeships: 1 each in Charlotte, Collier, Orange, and Pasco Counties; 2 each in Brevard and Pinellas Counties; and 3 in Broward County.

Effective December 1, 2006, the bill establishes:

- 20 new circuit judgeships: 1 each in the First, Seventh, Tenth, and Twelfth Circuits; and 2 each in the Fourth, Fifth, Ninth, Eleventh, Thirteenth, and Seventeenth Circuits; and 4 in the Twentieth Circuit.
- 13 new county court judgeships: 1 each in Brevard, Miami-Dade, Duval, Lee, Marion, Orange, Osceola, Palm Beach, Pasco, Pinellas, and Polk Counties; and 2 in Broward County.

Accordingly, the bill establishes a total of:

- For circuit judgeships, 1 each in the Second, Sixth, Fourteenth, Eighteenth, and Nineteenth Circuits; 2 each in the First, Seventh, Tenth, and Twelfth Circuits; 3 each in the Fourth, Ninth, and Seventeenth Circuits; 4 each in the Fifth, Eleventh, and Thirteenth Circuits; and 6 in the Twentieth Circuit.
- For county judgeships, 1 each in Charlotte, Collier, Miami-Dade, Duval, Lee, Marion, Osceola, Palm Beach, and Polk Counties; 2 each in Orange and Pasco Counties; 3 each in Brevard and Pinellas Counties; and 5 in Broward County.

C. SECTION DIRECTORY:

Section 1. Amends s. 26.031, F.S., establishing new circuit judgeships effective September 1, 2006.

Section 2. Amends s. 34.022, F.S., establishing new county court judgeships effective September 1, 2006.

Section 3. Amends s. 26.031, F.S., establishing new circuit judgeships effective December 1, 2006.

Section 4. Amends s. 34.022, F.S., establishing new county court judgeships effective December 1, 2006.

Section 5. Amends s. 35.06, F.S., establishing new appellate judgeships effective September 1, 2006.

Section 6. Authorizes positions and approved salary rate and provides appropriations.

Section 7. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides a recurring appropriation to the state courts of $11.6 million and a nonrecurring appropriation of $385,448 from the General Revenue Fund to cover the cost of 149 new positions, including judges, judicial assistants, and law clerks; associated expenses; Operating Capital Outlay (OCO); and special category expenses for a portion of Fiscal Year 2006-2007. Subsequent required annual recurring appropriations total approximately $16.1 million. The bill also provides salary rate of 11,897,925.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The cost of county judges and judicial assistants are paid for by the state. Under s. 29.008, F.S., counties are responsible for facilities, security, communications and information technology costs for county and circuit courts. This bill could result in additional costs in these areas.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 10, 2006, meeting, the Judiciary Appropriations Committee approved a strike-all amendment which conformed HB 113 to the Supreme Court's December 15, 2005, judicial certification order. The amendment increased the total number of judgeships established from 55 to 66. It also established certain judgeships beginning September 1, 2006, with the remainder established beginning December 1, 2006. The amendment also added language appropriating funds and authorizing positions and rate.

CHAMBER ACTION

The Judiciary Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to judges; amending s. 26.031, F.S.; revising the number of circuit court judges in certain circuits; amending s. 34.022, F.S.; revising the number of county court judges in certain counties; amending s. 35.06, F.S.; revising the number of appellate court judges in certain appellate districts; providing appropriations and authorizing positions; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective September 1, 2006, subsections (1), (2), (4) through (7), (9) through (14), and (17) through (20) of section 26.031, Florida Statutes, as amended by section 1 of chapter 2005-356, Laws of Florida, are amended to read:

26.031 Judicial circuits; number of judges.--The number of circuit judges in each circuit shall be as follows:

JUDICIAL CIRCUIT	TOTAL

(1) First.....23 ~~22~~
(2) Second.....17 ~~16~~
(4) Fourth.....33 ~~32~~
(5) Fifth.....30 ~~28~~
(6) Sixth.....45 ~~44~~
(7) Seventh.....27 ~~26~~
(9) Ninth.....41 ~~40~~
(10) Tenth.....27 ~~26~~
(11) Eleventh.....79 ~~77~~
(12) Twelfth.....20 ~~19~~
(13) Thirteenth.....43 ~~41~~
(14) Fourteenth.....11 ~~10~~
(17) Seventeenth.....57 ~~56~~
(18) Eighteenth.....26 ~~25~~
(19) Nineteenth.....19 ~~18~~
(20) Twentieth.....27 ~~25~~

Section 2. Effective September 1, 2006, subsections (5), (6), (8), (11), (48), (51), and (52) of section 34.022, Florida Statutes, as amended by section 2 of chapter 2005-356, Laws of Florida, are amended to read:

34.022 Number of county court judges for each county.--The number of county court judges in each county shall be as follows:

COUNTY	TOTAL
(5) Brevard	11 ~~9~~
(6) Broward	31 ~~28~~
(8) Charlotte	3 ~~2~~

(11) Collier.....6 ~~5~~

(48) Orange.....17 ~~16~~

(51) Pasco.....6 ~~5~~

(52) Pinellas.....17 ~~15~~

Section 3. Effective December 1, 2006, subsections (1), (4), (5), (7), (9) through (13), (17), and (20) of section 26.031, Florida Statutes, as amended by section 1 of chapter 2005-356, Laws of Florida, and as amended by this act, are amended to read:

26.031 Judicial circuits; number of judges.--The number of circuit judges in each circuit shall be as follows:

JUDICIAL CIRCUIT	TOTAL
(1) First	24 ~~23~~
(4) Fourth	35 ~~33~~
(5) Fifth	32 ~~30~~
(7) Seventh	28 ~~27~~
(9) Ninth	43 ~~41~~
(10) Tenth	28 ~~27~~
(11) Eleventh	81 ~~79~~
(12) Twelfth	21 ~~20~~
(13) Thirteenth	45 ~~43~~
(17) Seventeenth	59 ~~57~~
(20) Twentieth	31 ~~27~~

Section 4. Effective December 1, 2006, subsections (5), (6), (15), (35), (41), (43), and (48) through (53) of section 34.022, Florida Statutes, as amended by section 2 of chapter

2005-356, Laws of Florida, and as amended by this act, are amended to read:

34.022 Number of county court judges for each county.--The number of county court judges in each county shall be as follows:

COUNTY	TOTAL
(5) Brevard	12 ~~11~~
(6) Broward	33 ~~31~~
(15) Duval	17 ~~16~~
(35) Lee	8 ~~7~~
(41) Marion	5 ~~4~~
(43) Miami-Dade	43 ~~42~~
(48) Orange	18 ~~17~~
(49) Osceola	4 ~~3~~
(50) Palm Beach	19 ~~18~~
(51) Pasco	7 ~~6~~
(52) Pinellas	18 ~~17~~
(53) Polk	10 ~~9~~

Section 5. Effective September 1, 2006, subsections (2) and (4) of section 35.06, Florida Statutes, are amended to read:

35.06 Organization of district courts of appeal.--A district court of appeal shall be organized in each of the five appellate districts to be named District Court of Appeal, _____ District. The number of judges of each district court of appeal shall be as follows:

(2) In the second district there shall be 15 ~~14~~ judges.

(4) In the fourth district there shall be 13 ~~12~~ judges.

Section 6. One hundred and forty-nine full-time positions and 11,897,925 in associated salary rate are authorized, and the sums of $11,639,020 in recurring funds and $385,448 in nonrecurring funds are hereby appropriated from the General Revenue Fund to the state courts for the 2006-2007 fiscal year.

Section 7. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 Lawful Ownership, Possession, and Use of Firearms and Other Weapons
SPONSOR(S): Baxley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee		Thomas	Hogge
2) Agriculture Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

The bill addresses provisions relating to the storage and transport of firearms in a motor vehicle on property set aside for the parking of a motor vehicle.

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles.

The bill creates a criminal penalty of a third degree felony for violation of the prohibition created by the bill.

The bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles.

The bill takes effect upon becoming a law.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: the bill limits the ability of persons and businesses to maintain certain policies related to their premises, but permits lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles.

Promote Personal Responsibility: the bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles.

Maintain Public Security: the bill affects policies regarding the possession of firearms in vehicles in certain locations.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

A firearm is defined as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime."[1]

Section 790.053, F.S, provides that it is unlawful to openly carry any firearm or electric weapon, except a person may openly carry a self-defense chemical spray or a nonlethal stun gun or other nonlethal electric weapon that does not fire a or projectile and is designed solely for defensive purposes. A violation of this provision is a misdemeanor of the second degree.

Section 790.06, F.S, provides that the Department of Agriculture and Consumer Services may issue licenses to persons qualified to carry concealed weapons or firearms. A concealed weapon or firearm is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9)."

Section 790.25, F.S., provides for the lawful and unlawful ownership, possession, and use of firearms and other weapons. It specifically prohibits the carrying of a concealed firearm or weapon without a permit. This section provides that the provisions of s. 790.053, F.S., and s. 790.06, F.S., discussed above, do not apply to:

- Members of the military, law enforcement, or persons carrying out or training for emergency management duties;
- Guards or messengers of common carriers;
- Members of any organization duly authorized to purchase or receive weapons;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms;
- A person firing weapons for testing or target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;

[1] Section 790.001(6), F.S.

- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; or
- Investigators employed by the several public defenders of the state or the capital collateral representative.

Subsection (5) of s. 790.06, F.S., specifically provides that it is lawful "for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use."

Schools

In addition to the statutes discussed above regarding the possession of firearms, each district school board in Florida is required to have a zero-tolerance policy regarding the possession of firearms by students on school grounds.[2] A violation of the policy must result in a least a one-year expulsion from school and referral to the criminal justice or juvenile justice system. Trespassers that carry a weapon or firearm on school property, public or private, commit a felony of the third degree.[3]

Congress enacted the Gun Free School Zones Act in 1990.[4] It was subsequently overturned by the United States Supreme Court as a violation of Congress's powers under the commerce clause to regulate inter-state commerce.[5] The Act was passed again in 1996 with changes to address the concerns of the Supreme Court that made it only applicable to guns that crossed state lines in commerce.[6] In general, the Act makes it unlawful for any person to possess a firearm in a school zone. The term "school zone" means "in, or on the grounds of, a public, parochial or private school or within a distance of 1,000 feet from the grounds of a public, parochial or private school." The term "school" means "a school which provides elementary or secondary education, as determined under State law." Whoever violates the Act may be fined up to $5,000, imprisoned up to five years, or both. Exceptions to this Act include:

- if the person is licensed to do so;
- if the firearm is not loaded and in a locked container, or a locked firearms rack which is in a motor vehicle;
- by an individual for use in a program approved by a school in the school zone;
- by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- by a law enforcement officer acting in his or her official capacity; or
- the firearm is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

Other States

Oklahoma and Alaska have passed laws prohibiting persons and businesses from banning the otherwise lawful possession of a firearm in a locked vehicle in a parking lot.[7] The Oklahoma statute

[2] Section 1006.13(2), F.S.
[3] Section 810.095, F.S.
[4] P.L. 101-647, Sec. 1702(b)(1), 18 USC ss. 921 and 922.
[5] U.S. v. Lopez, 514 US 549 (1995).
[6] P.L. 104-208.
[7] Alaska Stat. Art. 10A, Sec. 18.65.800; Okla. Stat. tit. 21, Pt. IV, Ch. 53, Sec. 1289.7a.

has not taken effect pending the outcome of federal litigation seeking to overturn the law.[8] Georgia and Indiana have similar legislation pending.[9]

Occupational Violence

An average of 1.7 million people were victims of violent crime while working or on duty in the United States each year from 1993 through 1999, including an average of 1.3 million simple assaults, 325,000 aggravated assaults, 36,500 rapes and sexual assaults, 70,000 robberies, and 900 homicides.[10] In 2001, there were 639 workplace homicides in the U.S., the lowest number since the Census of Fatal Occupational Injuries began in 1992 (just over 80% of these were from shootings). Of the occupations examined, police officers, corrections officers, and taxi drivers were victimized at the highest rates. Businesses can be and have been held liable for crimes occurring on their property where they were found to be negligent in providing security.

Effect of Proposed Changes:

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles. The bill creates a criminal penalty of a third degree felony for violation of the prohibition created by the bill. A third degree felony is punishable, pursuant to s. 775.082 and s. 775.083, F.S., by a term of imprisonment not exceeding 5 years and a fine not to exceed $5,000.

The bill provides to any person or entity immunity from civil liability for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles. This immunity does not apply if the person or entity commits a criminal act involving the use of such firearm.

The bill provides that a person who is injured due to a policy prohibited by the bill may sue the person or entity with such policy, and if he or she prevails, the court shall award actual damages, court costs, and attorney fees and enjoin any further violations. If an employee who is lawfully transporting or storing a firearm in a locked motor vehicle on property set aside for parking is discharged for violating a policy prohibited under this bill, the employee is entitled to reinstatement to the same or equivalent position, including any fringe benefits and seniority rights, compensation for any lost wages, benefits, or other lost remuneration caused by the termination, and payment of attorney's fees and costs.

The bill defines "motor vehicle" as any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, or any other vehicle required to be registered under Florida law. The bill states that the intent of the new law is "to reinforce and protect the right of each law-abiding citizen to enter and exit any parking lot, parking facility, or space used for the parking of motor vehicles while such person is lawfully transporting and storing a firearm or firearms in the motor vehicle and the firearm or firearms are locked in or locked to the motor vehicle, to avail himself or herself of temporary or long-term parking or storage of a motor vehicle, and to prohibit any infringement of the right to lawful possession of firearms when such firearms are being transported and stored in a vehicle for a lawful purpose."

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[8] The Williams Co. and ConocoPhillips Co. have sued the State of Oklahoma in U.S. District Court, Northern District of Oklahoma, No. 04-CV-820 H(J). The federal court enjoined the enforcement of the statute pending the litigation. It certified to the Court of Criminal Appeals of Oklahoma the question of whether the statute was a criminal statute. The Court of Criminal Appeals ruled that it was a criminal statute in *Whirlpool Corp. v. Henry,* 110 P.3d 83 (Okla. Crim. App. 2005).

[9] House Bill 1028 passed the Committee on Public Safety and Homeland Security in the Indiana House of Representatives on January 25, 2006. House Bill 998 has been referred to the Committee on Public Safety in the Georgia House of Representatives.

[10] Violence in the Workplace, 1993-99, published by the Bureau of Justice Statistics, December 2001 (NCJ 190076).

C. SECTION DIRECTORY:

Section 1. Amends s. 790.25, F.S., relating to the lawful ownership, possession, and use of firearms and other weapons.

Section 2. Amends s. 27.53, F.S., relating to the appointment of assistants and other staff by public defenders to conform a cross-reference.

Section 3. Provides that the bill will become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

While the bill does create a new felony penalty which is unranked on the offense severity chart in s. 921.0013, F.S., third degree felonies rarely result in jail or prison time. The Criminal Justice Estimating Conference routinely classifies new third degree felony penalties as having no fiscal impact or insignificant fiscal impact. See also additional fiscal comments in "D." below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any significant impact on local government revenues. See also additional fiscal comments in "D." below.

2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures. While it does create a new felony penalty, third degree felonies rarely result in jail or prison time. See also additional fiscal comments in "D." below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private is unclear. Employers that have policies regarding the possession of firearms in vehicles in their parking lots will no longer enjoy these policies. However, employers may enjoy greater protection from liability regarding the use of a firearm in the employer's parking lot that was lawfully stored in a vehicle. It is unknown how many employers have these policies.

D. FISCAL COMMENTS:

The bill creates a criminal penalty of a felony of the third degree. Any third degree felony conviction under the bill's provisions could result in a fine of up to $5,000. Pursuant to s. 142.01, F.S., as of July 1, 2004, fines collected under the penal laws of the state are distributed to the Clerk of Courts of the respective county where the prosecution occurred.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Preemption

There may be some federal laws that specifically regulate the premises of certain employers, including their parking lots. In its memorandum of law in the case challenging the Oklahoma statute, Haliburton Energy Services, Inc. argues that federal laws regulating nuclear safety,[11] oil and gas operations,[12] and the use of explosives,[13] preempt the state law as it applies to the premises of these businesses.[14] It has also been argued in this same case that the federal Occupational Safety and Health Act[15] preempts the state statute.[16] Federal law is considered to have preempted a specific area of law when Congress has shown its intent to occupy a given field. When Congress is determined to have shown such an intent, a court may strike down a state law that attempts to regulate this same field of law. A Court may find that Congress has completely preempted an area of law or it may find that the preemption is only a partial preemption and some state regulation may be allowed.

Access to Courts

The bill provides immunity for persons and entities from civil liability in lawsuits for certain actions involving the use of firearms. This provision may implicate the "access to court" protections of the Florida Constitution.[17] The Florida Supreme Court has held that that where a right to access the courts for redress for a particular injury predates the adoption of the access to courts provision in the 1968 state constitution, the Legislature cannot abolish the right without providing a reasonable alternative unless the Legislature can show (1) an overpowering public necessity to abolish the right and (2) no alternative method of meeting such public necessity.[18] A litigant could argue that the bill denies him or her access to the courts if a cause of action existed under Florida law before the adoption of the access to courts provision in 1968. Should a court find a cause of action did not exist, the judicial inquiry would end at that point. But it is also possible that a court could hold that

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[11] Atomic Energy Act of 1954 (42 USCA § 2011 et seq.).
[12] Pipeline Safety Act (49 USCA § 60101 et seq.).
[13] Explosives Act (18 USCA § 841 et seq.).
[14] *See* Brief of Halliburton Energy Services, Inc., As Amicus Curiae in Support of Plaintiff's Complaint and Plaintiff's Motion for A Permanent Injunction, WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H (J), United States District Court, N.D. Oklahoma.
[15] 29 U.S.C. § 651, et seq.
[16] *See* Plaintiff's Opening Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction on behalf of Plaintiff Whirlpool Corporation, WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H (J), United States District Court, N.D. Oklahoma.
[17] Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." *See generally* 10A FLA. JUR. 2D CONSTITUTIONAL LAW §§ 360-69.
[18] *See Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

pre-1968 Florida law would have allowed such suits under the common-law cause of action for negligence. If so, this bill might be evaluated under the *Kluger* standard.

Right to Bear Arms

The Florida Constitution[19] and the U.S. Constitution[20] contain provisions protecting a citizen's right to bear arms. However, these provisions are not implicated without some sort of state action.[21] The Florida Supreme Court, in interpreting Florida's constitutional provision, held that while "the Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen."[22]

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of this bill is upon becoming a law. The bill contains a new criminal penalty. Typically, when creating a criminal penalty, the public may need to be given some time to be put on notice of its creation.

The bill applies to policies or rules affecting any property that has been set aside for the parking of motor vehicles. The bill does not distinguish between commercial property or residential property. If the bill is intended to apply to commercial property only, it may need to be clarified.

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that **is locked in or locked to** a motor vehicle that is on any premises set aside for the parking of motor vehicles. However, the bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and **stored in a locked motor vehicle** on the person's or entity's property that was set aside for the parking of motor vehicles. If these provisions are to be consistent, the bill may need to be amended.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[19] "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Art. I, s. 8(a), Fla. Const.

[20] "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

[21] *See* Validity of state gun control legislation under state constitutional provisions securing the right to bear arms, 86 A.L.R.4th 93; Constitutional right to bear arms--Federal constitution; generally-- Relationship of right to bear arms to preservation of a militia 79 Am. Jur. 2d Weapons and Firearms § 6.

[22] *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).

A bill to be entitled

An act relating to lawful ownership, possession, and use of firearms and other weapons; amending s. 790.25, F.S.; prohibiting specified persons, employers, and business entities from establishing, maintaining, or enforcing any policy or rule that prohibits a person from parking a motor vehicle on property set aside for such purpose when a secured firearm or firearms are being lawfully transported and stored in the motor vehicle; providing a penalty; providing construction; providing for specified immunity from liability; providing civil remedies; defining "motor vehicle" for purposes of the act; providing intent; amending s. 27.53, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(1) DECLARATION OF POLICY.--The Legislature finds as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home, and property, and the use by United States or state military organizations, and as otherwise now authorized by law, including

the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places, and lawful hunting and other lawful purposes.

(2) USES NOT AUTHORIZED.--

(a) This section does not authorize carrying a concealed weapon without a permit, as prohibited by ss. 790.01 and 790.02.

(b) The protections of this section do not apply to the following:

1. A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or who is a habitual or chronic alcoholic, or a person using weapons or firearms in violation of ss. 790.07-790.12, 790.14-790.19, 790.22-790.24.~~,~~

2. Vagrants and other undesirable persons as defined in s. 856.02.~~,~~

3. A person in or about a place of nuisance as defined in s. 823.05, unless such person is there for law enforcement or some other lawful purpose.

(3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(a) Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing

themselves for military duty, or while subject to recall or mobilization.~~,~~

(b) Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chapters 250 and 251, and under federal laws, when on duty or when training or preparing themselves for military duty.~~,~~

(c) Persons carrying out or training for emergency management duties under chapter 252.~~,~~

(d) Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state.~~,~~

(e) Officers or employees of the state or United States duly authorized to carry a concealed weapon.~~,~~

(f) Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.~~,~~

(g) Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while

such members are at or going to or from their collectors' gun shows, conventions, or exhibits.~~;~~

(h) A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition.~~;~~

(i) A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.~~;~~

(j) A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.~~;~~

(k) A person firing weapons in a safe and secure indoor range for testing and target practice.~~;~~

(l) A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.~~;~~

(m) A person parking a motor vehicle on any property set aside for the parking of a motor vehicle, whether or not such property is designated as a parking lot, parking facility, or parking space, when a firearm or firearms are being lawfully stored and transported in the motor vehicle and the firearm or firearms are locked in or locked to the motor vehicle.

(n)~~(m)~~ A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.~~;~~

(o)~~(n)~~ A person possessing arms at his or her home or place of business.~~;~~

(p)~~(o)~~ Investigators employed by the several public defenders of the state, while actually carrying out official duties, provided such investigators:

1. Are employed full time;

2. Meet the official training standards for firearms established by the Criminal Justice Standards and Training Commission as provided in s. 943.12(5) and the requirements of ss. 493.6108(1)(a) and 943.13(1)-(4); and

3. Are individually designated by an affidavit of consent signed by the employing public defender and filed with the clerk of the circuit court in the county in which the employing public defender resides.

(q)~~(p)~~ Investigators employed by the capital collateral representative, while actually carrying out official duties, provided such investigators:

1. Are employed full time;

2. Meet the official training standards for firearms as established by the Criminal Justice Standards and Training Commission as provided in s. 943.12(1) and the requirements of ss. 493.6108(1)(a) and 943.13(1)-(4); and

3. Are individually designated by an affidavit of consent signed by the capital collateral representative and filed with the clerk of the circuit court in the county in which the investigator is headquartered.

(4) CONSTRUCTION.--This act shall be liberally construed to carry out the declaration of policy herein and in favor of

the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith.

(5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012.

(6) STORAGE AND TRANSPORT OF FIREARMS IN LOCKED VEHICLE IN PARKING AREA; PENALTY; IMMUNITY FROM LIABILITY.--

(a) No person, property owner, tenant, employer, or business entity shall establish, maintain, or enforce any policy or rule that prohibits or has the effect of prohibiting any person who may lawfully possess, purchase, receive, or transfer firearms from parking a motor vehicle on any property set aside

for the parking of a motor vehicle, whether or not such property is designated as a parking lot, parking facility, or parking space, when the person is lawfully transporting and storing a firearm or firearms in the motor vehicle and the firearm or firearms are locked in or locked to the motor vehicle. Any person, property owner, tenant, employer, or owner of a business entity who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, and s. 775.084. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012.

(b) No person, property owner, tenant, employer, or business entity shall be liable in any civil action for any occurrence which results from, is connected with, or is incidental to the use of a firearm which is being lawfully transported and stored in a locked motor vehicle on any property set aside for the parking of motor vehicles as provided in paragraph (a), unless the person, property owner, tenant, employer, or owner of the business entity commits a criminal act involving the use of such firearm.

(c)1. A person who is injured, physically or otherwise, as a result of any policy or rule prohibited by paragraph (a) may bring a civil action in the appropriate court against any person, property owner, tenant, employer, or business entity violating the provisions of paragraph (a), including an action to enforce this subsection. If a plaintiff prevails in a civil action related to a policy or rule prohibited by this act, the

court shall award actual damages, enjoin further violations of this act, and award court costs and attorney's fees to the prevailing plaintiff.

2. An employee discharged by an employer or business entity for violation of a policy or rule prohibited under paragraph (a), when such employee was lawfully transporting or storing a firearm in a locked motor vehicle on property set aside by the employer or business entity for the parking of motor vehicles as provided in paragraph (a), is entitled to full recovery as specified in sub-subparagraphs a.-d. In the event the demand for such recovery is denied, the employee may bring a civil action in the courts of this state against the employer and is entitled to:

a. Reinstatement to the same position held at the time of his or her termination from employment, or to an equivalent position.

b. Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

c. Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the termination.

d. Payment of reasonable attorney's fees and costs incurred.

(d) As used in this section, "motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, or any other vehicle required to be registered under Florida law.

(e) It is the intent of this subsection to reinforce and protect the right of each law-abiding citizen to enter and exit

any parking lot, parking facility, or space used for the parking of motor vehicles while such person is lawfully transporting and storing a firearm or firearms in the motor vehicle and the firearm or firearms are locked in or locked to the motor vehicle, to avail himself or herself of temporary or long-term parking or storage of a motor vehicle, and to prohibit any infringement of the right to lawful possession of firearms when such firearms are being transported and stored in a vehicle for a lawful purpose.

Section 2. Subsection (1) of section 27.53, Florida Statutes, is amended to read:

27.53 Appointment of assistants and other staff; method of payment.--

(1) The public defender of each judicial circuit is authorized to employ and establish, in such numbers as authorized by the General Appropriations Act, assistant public defenders and other staff and personnel pursuant to s. 29.006, who shall be paid from funds appropriated for that purpose. Notwithstanding the provisions of s. 790.01, s. 790.02, or s. 790.25(2)(a), an investigator employed by a public defender, while actually carrying out official duties, is authorized to carry concealed weapons if the investigator complies with s. 790.25(3)(p) ~~(o)~~. However, such investigators are not eligible for membership in the Special Risk Class of the Florida Retirement System. The public defenders of all judicial circuits shall jointly develop a coordinated classification and pay plan which shall be submitted on or before January 1 of each year to the Justice Administrative Commission, the office of the

President of the Senate, and the office of the Speaker of the House of Representatives. Such plan shall be developed in accordance with policies and procedures of the Executive Office of the Governor established in s. 216.181. Each assistant public defender appointed by a public defender under this section shall serve at the pleasure of the public defender. Each investigator employed by a public defender shall have full authority to serve any witness subpoena or court order issued, by any court or judge within the judicial circuit served by such public defender, in a criminal case in which such public defender has been appointed to represent the accused.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 371 CS Cancer Drug Donation Program
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	10 Y, 0 N, w/CS	Brown-Barrios	Brown-Barrios
2) Judiciary Committee		Hogge	Hogge
3) Health Care Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

HB 371 CS creates the Cancer Drug Donation Program Act under s. 381.94, F.S. The bill requires the Department of Health (DOH) to establish and maintain a cancer drug and supplies donation program under which a donor may donate cancer drugs or supplies needed to administer cancer drugs for use by an individual who meets eligibility criteria specified by the DOH in rule. The DOH is authorized to adopt rules for the implementation of the program.

Donations may be made only at a hospital pharmacy that elects or volunteers to participate in the program. A dispensing pharmacy may charge a handling fee sufficient to cover the cost of preparation and dispensing of cancer drugs or supplies under the program. Under the bill, a cancer drug may only be accepted or dispensed under the program if such drug is in its original, unopened, sealed container or packaging. A cancer drug cannot be accepted or dispensed under the program if the drug bears an expiration date that is less than 6 months after the date the drug was donated or if the drug appears to have been tampered with or mislabeled.

A person who is eligible to receive cancer drugs or supplies under the state Medicaid program or under any other prescription drug program funded in whole or in part by the state, or by any other prescription drug program funded in whole or in part by the federal government, or by any other prescription drug program offered by a third-party insurer, is ineligible to participate in the program, unless benefits have been exhausted, or a certain cancer drug or cancer supply is not covered by their prescription drug program.

The bill requires the DOH to establish and maintain a participant facility (i.e., hospital pharmacy) registry for the program. The registry must include the name, address, and telephone number of the facility.

The bill provides immunity from civil and criminal liability for donors, pharmaceutical manufacturers or cancer supply manufacturers in certain circumstances.

According to the DOH, the bill, if enacted, will have a negative fiscal impact on DOH of $65,306 in FY 06/07 and $71, 079 in FY 07/08.

If enacted, the bill will take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates an additional responsibility for the DOH and authorizes the development of additional rules.

Ensure lower taxes. The bill permits a participant facility dispensing cancer drugs or supplies under the proposed donation program, to charge a handling fee "sufficient to cover the cost of preparation and dispensing of cancer drugs or supplies...."

Promote personal responsibility: The bill allows individuals to contribute cancer drugs on a voluntary basis.

Empower families: The bill provides opportunities for certain families with limited resources to pursue less costly cancer treatments.

B. EFFECT OF PROPOSED CHANGES:

EFFECT OF HB 371 CS

HB 371 CS creates the Cancer Drug Donation Program Act under s. 381.94, F.S. The bill requires the DOH to establish and maintain a cancer drug and supplies donation program under which a donor defined as a patient or patient representative, physician, health care facility, nursing home, hospice, or hospital pharmacy may donate cancer drugs provided that it has been maintained within a closed drug delivery system[1] or supplies needed to administer cancer drugs for use by an individual who meets eligibility criteria specified by the DOH in rule. Drug manufacturers, medical device manufacturers or suppliers, wholesalers of drugs or supplies may also donate cancer drugs or supplies to the program. The DOH is authorized to adopt rules for the implementation of the program.

Donations may be made only at a hospital pharmacy that elects or volunteers to participate in the program. A dispensing pharmacy may charge a handling fee sufficient to cover the cost of preparation and dispensing of cancer drugs or supplies under the program. Under the bill, a cancer drug may only be accepted or dispensed under the program if the drug is in its original, unopened, sealed container or packaging. A cancer drug cannot be accepted or dispensed under the program if it bears an expiration date that is less than 6 months after the date the drug was donated or if the drug appears to have been tampered with or mislabeled.

A person who is eligible to receive cancer drugs or supplies under the state Medicaid program or under any other prescription drug program funded in whole or in part by the state, or by any other prescription drug program funded in whole or in part by the federal government, or by any other prescription drug program offered by a third-party insurer, is ineligible to participate in the program, unless benefits have been exhausted, or a certain cancer drug or cancer supply is not covered by their prescription drug program.

The bill requires the DOH to establish and maintain a participant facility (i.e., hospital pharmacy) registry for the program. The registry must include the name, address, and telephone number of the facility. The DOH must make the participant facility registry available on the department's website to any donor wishing to donate cancer drugs or supplies to the program. The DOH web site shall also contain links to cancer drug manufacturers that offer drug assistance programs or offer free medication.

Under the act, a donor of cancer drugs or supplies, or a participant facility in the program, who exercises reasonable care in donating, accepting, distributing, or dispensing cancer drugs or supplies

[1] Defined in the bill as a system in which the actual control of the unit-dose medication package is maintained by a facility rather than by the individual patient.

under the program is immune from civil or criminal liability and from professional disciplinary action of any kind for any injury, death, or loss to person or property relating to activities of the program.

In addition, a pharmaceutical manufacturer or cancer supply manufacturer is not liable for any claim or injury arising from the donation and use of any cancer drug under the program, including, but not limited to, liability for failure to transfer or communicate product or consumer information regarding the donated drug or supply as well as the expiration date of the transferred drug or supply.

Because the bill creates new law and allows the donation of cancer drugs or supplies currently prohibited by statute and regulations, the bill provides that if any conflict exists between the provisions contained in the newly created s. 381.94, F.S., and provisions in Chapter 465, F.S.,[2] or Chapter 499, F.S.,[3] the provisions contained in s. 381.94, F.S., shall control as to the operation of the Cancer Drug Donation Program Act.

BACKGROUND AND CURRENT SITUATION

Cancer is a general term for a group of diseases in which abnormal cells grow out of control. Cancer cells can invade nearby tissues and can spread through the bloodstream and lymphatic system to other parts of the body.[4] Cancer is the second leading cause of death in Florida and in the United States. In 2005, an estimated 570,000 Americans—or more than 1,500 people a day—were expected to die of cancer. Of these annual cancer deaths, 40,090 are expected in Florida. In addition, approximately 1.4 million new cases of cancer were expected to be diagnosed nationally. This figure includes an estimated 96,200 new cases that were likely to be diagnosed in Florida.[5]

Estimated New Cases of Cancer – 2005		
Types of Cancers	**US**	**FL**
All Cancers	1,372,910	96,200
Breast (female)	211,240	13,430
Uterine Cervix	10,370	730
Colon & Rectum	145,250	9,860
Uterine Corpus	40,880	2,520
Leukemia	34,810	2,620
Lung & Bronchus	172,570	13,130
Melanoma of the skin	59,580	4,600
Non-Hodgkin Lymphoma	56,390	3,470
Prostate	232,090	19,650
Urinary Bladder	63,210	4,890

The financial costs of cancer treatment are a burden to people diagnosed with cancer, their families, and society as a whole. Nationally, cancer treatment accounted for an estimated $72.1 billion in 2004 in spending.[6] The cost of treating cancer varies greatly by the type of cancer an individual has been diagnosed to have.

[2] Regulation of pharmacies.
[3] Regulation of drug, cosmetic, and household products.
[4] National Cancer Institute – Dictionary of Cancer Terms.
[5] Source: Cancer Facts & Figure, American Cancer Society, 2005.
[6] 1963-1995: Brown ML, Lipscomb J, Snyder C. The burden of illness of cancer: economic cost and quality of life. Annual Review of Public Health 2001;22:91-113. : NIH Report to the U.S. Congress, 2005; National Health Care Expenditures Projections: 2003-2013

Estimates of National Expenditures for Medical Treatment for the 15 Most Common Cancers[7]				
	Percent of all new cancers (1998)	Expenditures (billions; in 2004 dollars)	Percent of all cancer treatment expenditures	Average Medicare first year cost (2004 dollars)
Lung	12.7%	$9.6	13.3%	$24,700
Breast	15.9%	$8.1	11.2%	$11,000
Colorectal	10.7%	$8.4	11.7%	$24,200
Prostate	16.8%	$8.0	11.1%	$11,000
Lymphoma	4.6%	$4.6	6.3%	$21,500
Head/Neck	2.8%	$3.2	4.4%	$18,000
Bladder	4.4%	$2.9	4.0%	$12,300
Leukemia	2.4%	$2.6	3.7%	$18,000
Ovary	1.9%	$2.2	3.1%	$36,800
Kidney	2.6%	$1.9	2.7%	$25,300
Endometrial	2.9%	$1.8	2.5%	$16,200
Cervix	0.8%	$1.7	2.4%	$20,100
Pancreas	2.3%	$1.5	2.1%	$26,600
Melanoma	4.0%	$1.5	2.0%	$4,800
Esophagus	1.0%	$0.8	1.1%	$30,500
All Other	14.0%	$13.4	18.5%	$20,400

Lack of health insurance and other barriers to health care prevent many Americans from receiving optimal medical care. According to the 2003 national health survey data, there are approximately 2.9 million Floridians who lack health insurance.

Insurance Status of Floridians

Source of Insurance for Floridians				
Source of Insurance	FL Population	%	US Population	%
Employer	7,956,640	48	156,270,570	54
Individual	990,350	6	13,593,990	5
Medicaid	2,007,000	12	38,352,430	13
Medicare	2,726,250	16	34,190,710	12
Uninsured	2,957,290	18	44,960,710	16
Total	16,637,520	100	287,368,410	100

(Source: Kaiser Foundation - Population Distribution by Insurance Status, state data 2002-03, U.S. 2003)

According to National Institute of Health (NIH) - Cancer Institute, there are 500 agents (i.e., drugs) that are being used in the treatment of patients with cancer or cancer-related conditions.[8] There are estimates that consumers leave unused approximately $1 billion worth of unused prescription drugs[9] per year.

Cancer drug donation or repository program

To address the issue of affordability of treatment and unused prescription medication to treat cancer, some states have established a cancer drug donation or repository program to accept unused, unopened, prescription drugs and medical supplies. Wisconsin,[10] Colorado,[11] and Nebraska,[12] are among the states that have passed cancer drug donation laws. Several other states are considering similar legislation.[13]

In general, the cancer donation programs being established in other states have similar characteristics. These characteristics include, but are not limited to:

[7] Cancer Trend Progress Report – 2005 Update, U.S. National Institute of Health – National Cancer Institute.
[8] NCI Drug Dictionary, NIH-National Institute of Health, 2005.
[9] "Old Pills Finding New Medicine Cabinets," NY Times, May 18, 2005. This reference is to all prescription drugs not just drugs to treat cancer.
[10] Section 255.056, Wisconsin Statutes.
[11] Section 25-35-101, Colorado Statute.
[12] Title 181 Chapter 6, Nebraska Statute.
[13] National Conference of State Legislatures, 2005 Summary of Prescription Drug State Legislation.

- A mechanism to accept unused, unopened, individually packaged prescription drugs and medical supplies from individuals and health care facilities and these would be redistributed to uninsured and under-insured cancer patients.
- Preference being given to the uninsured for access to donated drugs and supplies.
- Donated drugs being distributed only when prescribed by a doctor and dispensed by a pharmacist.
- Donated drugs and supplies being in their original, unopened, sealed and tamper-evident packaging.
- Health facilities being able to charge a handling fee for dispensing donated cancer drugs but may not resell donated drugs.
- Having a central registry operated by a state agency to track participating facilities.

Relevant Statutory Provisions

Section 465.016, F.S.
Section 465.016(1) (l), F.S., prohibits a pharmacy from placing into stock any part of any prescription compounded or dispensed which is returned by a patient; however, in a hospital, nursing home, correctional facility, or extended care facility in which dispensed unit dose medication is transferred to the facility for administration, these may be returned.

Chapter 499, F.S.
The Florida Drug and Cosmetic Act is codified in ch. 499, F.S. The Act defines "wholesale distribution" to mean distribution of prescription drugs to persons other than a consumer or patient, but does not include specified activities. Chapter 499, F.S., provides safeguards for the public health and protection from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. The chapter provides uniform legislation to be administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the Federal Food, Drug, and Cosmetic Act and that portion of the Federal Trade Commission Act which expressly prohibits the false advertisement of drugs, devices, and cosmetics.

Section 499.014, F.S., authorizes the distribution of prescription drugs by a charitable organization under a limited permit issued by the DOH.

Section 893.13, F.S.
Section 893.13, F.S., provides that, except as authorized by Chapter 893, F.S., (i.e., Drug Abuse Prevention and Control) and Chapter 499, F.S., it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.

Florida Administrative Code
The DOH has adopted rules governing the issuance of a restricted prescription drug distribution permit for charitable organizations, and for the operation of their organizations under this permit.[14]

Relevant Government Agencies

U.S. Food and Drug Administration (FDA)
The FDA is the federal agency responsible for ensuring that foods, drugs, biological products, and medical devices are safe and effective. Under section 505 of Federal Food, Drug, and Cosmetic Act, no drug can be introduce or deliver for introduction into interstate commerce unless approved by the FDA.

The FDA has no specific regulations regarding cancer drug donation programs and leaves the cancer donation program to the discretion of the state as long as the state enforces applicable regulations relating to prescription medication.[15]

[14] Rules 64F-12.015(8)(c) and 64F-12.023(1)., F.A.C.

Department of Health
The Bureau of Statewide Pharmaceutical Services is responsible for enforcing Florida's Drug and Cosmetic Act, Chapter 499, F.S. The purpose of this act is to safeguard the health of the public and protect the public from injury by product use and merchandising deceit involving drugs, devices and cosmetics, as well as false and misleading advertising. The Bureau also provides pharmaceuticals to County Health Departments annually and administers the State of Florida's pharmaceutical contracts.
Agency for Health Care Administration
Hospitals are subject to oversight by the Agency for Health Care Administration and most are accredited by the Joint Commission for Healthcare Organizations. These entities have policies for reviewing pharmacy operations in hospitals.

C. SECTION DIRECTORY:

Section 1: Creates s. 381.94, F.S., to establish the Cancer Drug Donation Program under the DOH.

Section 2. Establishes an effective date for the act of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the DOH, 1 full-time equivalent position is needed to create and maintain the registry, to provide consultation and technical assistance, and to perform other administrative functions.

	FY 06-07	FY 07-08
Salary and Expenses	($65,306)	($71, 079)

The bill does not identify the source of funding for this new program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For a hospital pharmacy that elects or volunteers to participate in the program, there will be costs associated with the processing, storage, dispensing and disposal of donated cancer drugs and supplies. These costs could be recovered fully or in part by the handling fee authorized in the bill to cover the

[15] Telephone discussion with FDA concerning HB 371, Stewart Watson, REHS LCDR, USPHS, Public Affairs Specialist Florida District – FDA.

cost of preparing and dispensing the cancer drugs or supplies under the program. The fee will be established in rules adopted by the DOH.

D. FISCAL COMMENTS:

According to the DOH, in order to dispense donated drugs to eligible recipients, participating hospital pharmacies will be required to obtain a Community Pharmacy Permit thus incurring an additional cost of $255.00 for licensure.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The act authorizes the DOH to adopt implementing rules to include:

- Eligibility criteria, including a method to determine priority of eligible patients under the program.
- Standards and procedures for participants that accept, store, distribute, or dispense donated cancer drugs or supplies.
- Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense cancer drugs or supplies under the program.
- The maximum handling fee that may be charged by a participant facility that accepts and distributes or dispenses donated cancer drugs or supplies.
- Categories of cancer drugs and supplies that the program will accept for dispensing.
- Categories of cancer drugs and supplies that the program will not accept for dispensing and the reason that such drugs and supplies will not be accepted.
- Maintenance and distribution of the participant registry.

However, the bill does not provide the DOH with any guidance as part of this delegated authority: The bill gives the agency broad discretion on formulating rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a new program, but makes no provision for a funding source to cover the anticipated fiscal impact.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Health Care General Committee adopted one amendment to the bill. The amendment:

- Restricts cancer drugs to those approved by the FDA.
- Defines closed drug delivery system.
- Changes the definition of "donor" to include only cancer drugs that have been maintained within a closed drug delivery system.
- Defines "nursing home."

- Changes the definition of "Participant facility" to mean a class II institutional hospital pharmacy.
- Strengthens provisions to ensure the integrity of a donated drug.
- Provides that a donation of cancer drugs can be made only at a participant facility.
- Allows the DOH to exclude any drug based on its therapeutic effectiveness or high potential for abuse or diversion.
- Excludes a person receiving Medicaid or any other prescription drug program funded in whole or in part by the federal government (e.g., Medicare), or by any other prescription drug program offered by a third-party insurer, unless benefits have been exhausted, or a certain cancer drug or cancer supply is not covered by the prescription drug program.
- Requires the DOH to maintain a cancer drug donation program web site and links to cancer supply manufacturers that offer drug assistance programs or offer free medication.
- Adds cancer supply manufacturers to those immune from liability for any claim or injury arising from the donation and use of any donated cancer drug.
- Provides that if any conflict exists between the provisions contained in s. 381.94, F.S., and provisions in Chapter 465, F.S.,, or Chapter 499, F.S., the provisions contained in s. 381.94, F.S., shall control as to the operation of the Cancer Drug Donation Program.

As amended, the bill was reported favorably as a committee substitute.

CHAMBER ACTION

The Health Care General Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Cancer Drug Donation Program; creating s. 381.94, F.S.; providing a short title; creating the Cancer Drug Donation Program; providing a purpose; providing definitions; providing conditions for the donation of cancer drugs and supplies to the program; providing conditions for the acceptance of cancer drugs and supplies into the program, inspection of cancer drugs and supplies, and dispensing of cancer drugs and supplies to eligible patients; requiring a participant facility that accepts donated drugs and supplies through the program to comply with certain state and federal laws; authorizing a participant facility to charge fees under certain conditions; requiring the Department of Health, upon recommendation of the Board of Pharmacy, to adopt certain rules; providing for the ineligibility of certain persons to receive donated drugs; requiring the department to establish and maintain a participant facility registry; providing for the contents and availability of the

participant facility registry; providing immunity from civil and criminal liability for donors, pharmaceutical manufacturers, or cancer supply manufacturers in certain circumstances; providing that in the event of conflict between the provisions in s. 381.94, F.S., and provisions in ch. 465 or ch. 499, F.S., the provisions in s. 381.94, F.S., shall control; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 381.94, Florida Statutes, is created to read:

381.94 Cancer Drug Donation Program.--

(1) This section may be cited as the "Cancer Drug Donation Program Act."

(2) There is created a Cancer Drug Donation Program within the Department of Health for the purpose of authorizing and facilitating the donation of cancer drugs and supplies to eligible patients.

(3) As used in this section:

(a) "Cancer drug" means a prescription drug that has been approved under s. 505 of the federal Food, Drug, and Cosmetic Act and is used to treat cancer or its side effects or is used to treat the side effects of a prescription drug used to treat cancer or its side effects. "Cancer drug" does not include a substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03.

(b) "Closed drug delivery system" means a system in which the actual control of the unit-dose medication package is maintained by the facility rather than by the individual patient.

(c) "Department" means the Department of Health.

(d) "Donor" means a patient or patient representative who donates cancer drugs or supplies needed to administer cancer drugs that have been maintained within a closed drug delivery system; health care facilities, nursing homes, hospices, or hospitals with closed drug delivery systems; or pharmacies, drug manufacturers, medical device manufacturers or suppliers, or wholesalers of drugs or supplies, in accordance with this section. "Donor" includes a physician licensed under chapter 458 or chapter 459 who receives cancer drugs or supplies directly from a drug manufacturer, drug wholesaler, or pharmacy.

(e) "Eligible patient" means a person who the department determines is eligible to receive cancer drugs from the program.

(f) "Health care facility" means a health care facility licensed under chapter 395.

(g) "Health care clinic" means a health care clinic licensed under part XIII of chapter 400.

(h) "Hospice" means a corporation licensed under part VI of chapter 400.

(i) "Hospital" means a facility as defined in s. 395.002 and licensed under chapter 395.

(j) "Nursing home" means a facility licensed under part II of chapter 400.

(k) "Participant facility" means a class II hospital pharmacy that has elected to participate in the program and that accepts donated cancer drugs and supplies under the rules adopted by the department for the program.

(l) "Pharmacist" means a person licensed under chapter 465.

(m) "Pharmacy" means an entity licensed under chapter 465.

(n) "Prescribing practitioner" means a physician licensed under chapter 458 or any other medical professional with authority under state law to prescribe cancer medication.

(o) "Prescription drug" means a drug as defined in s. 465.003(8).

(p) "Program" means the Cancer Drug Donation Program created by this section.

(q) "Supplies" means any supplies used in the administration of a cancer drug.

(4) Any donor may donate cancer drugs or supplies to a participant facility that elects to participate in the program and meets criteria established by the department for such participation. Cancer drugs or supplies may not be donated to a specific cancer patient, and donated drugs or supplies may not be resold by the program. A participant facility may provide dispensing and consulting services to individuals who are not patients of the hospital.

(5) The cancer drugs or supplies donated to the program may be prescribed only by a prescribing practitioner for use by an eligible patient and may be dispensed only by a pharmacist.

(6)(a) A cancer drug may only be accepted or dispensed under the program if the drug is in its original, unopened, sealed container, or in a tamper-evident unit-dose packaging, except that a cancer drug packaged in single-unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened with tamper-resistant packaging intact.

(b) A cancer drug may not be accepted or dispensed under the program if the drug bears an expiration date that is less than 6 months after the date the drug was donated or if the drug appears to have been tampered with or mislabeled as determined in paragraph (c).

(c) Prior to being dispensed to an eligible patient, the cancer drug or supplies donated under the program shall be inspected by a pharmacist to determine that the drug and supplies do not appear to have been tampered with or mislabeled.

(d) A dispenser of donated cancer drugs or supplies may not submit a claim or otherwise seek reimbursement from any public or private third-party payor for donated cancer drugs or supplies dispensed to any patient under the program, and a public or private third-party payor is not required to provide reimbursement to a dispenser for donated cancer drugs or supplies dispensed to any patient under the program.

(7)(a) A donation of cancer drugs or supplies shall be made only at a participant facility. A participant facility may decline to accept a donation. A participant facility that accepts donated cancer drugs or supplies under the program shall comply with all applicable provisions of state and federal law

relating to the storage and dispensing of the donated cancer drugs or supplies.

(b) A participant facility that voluntarily takes part in the program may charge a handling fee sufficient to cover the cost of preparation and dispensing of cancer drugs or supplies under the program. The fee shall be established in rules adopted by the department.

(8) The department, upon the recommendation of the Board of Pharmacy, shall adopt rules to carry out the provisions of this section. Initial rules under this section shall be adopted no later than 90 days after the effective date of this act. The rules shall include, but not be limited to:

(a) Eligibility criteria, including a method to determine priority of eligible patients under the program.

(b) Standards and procedures for participant facilities that accept, store, distribute, or dispense donated cancer drugs or supplies.

(c) Necessary forms for administration of the program, including, but not limited to, forms for use by entities that donate, accept, distribute, or dispense cancer drugs or supplies under the program.

(d) The maximum handling fee that may be charged by a participant facility that accepts and distributes or dispenses donated cancer drugs or supplies.

(e) Categories of cancer drugs and supplies that the program will accept for dispensing; however, the department may exclude any drug based on its therapeutic effectiveness or high potential for abuse or diversion.

(f) Maintenance and distribution of the participant facility registry established in subsection (10).

(9) A person who is eligible to receive cancer drugs or supplies under the state Medicaid program or under any other prescription drug program funded in whole or in part by the state, by any other prescription drug program funded in whole or in part by the Federal Government, or by any other prescription drug program offered by a third-party insurer, unless benefits have been exhausted, or a certain cancer drug or supply is not covered by the prescription drug program, is ineligible to participate in the program created under this section.

(10) The department shall establish and maintain a participant facility registry for the program. The participant facility registry shall include the participant facility's name, address, and telephone number. The department shall make the participant facility registry available on the department's website to any donor wishing to donate cancer drugs or supplies to the program. The department's website shall also contain links to cancer drug manufacturers that offer drug assistance programs or free medication.

(11) Any donor of cancer drugs or supplies, or any participant facility in the program, that exercises reasonable care in donating, accepting, distributing, or dispensing cancer drugs or supplies under the program and the rules adopted under this section shall be immune from civil or criminal liability and from professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(12) A pharmaceutical or cancer supply manufacturer is not liable for any claim or injury arising from the donation and use of any cancer drug under this section, including, but not limited to, liability for failure to transfer or communicate product or consumer information regarding the donated drug or supply, as well as the expiration date of the donated drug or supply.

(13) If any conflict exists between the provisions in this section and the provisions in chapter 465 or chapter 499, the provisions in this section shall control the operation of the Cancer Drug Donation Program.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 849 Regulation of Court Interpreters
SPONSOR(S): Flores
TIED BILLS: **IDEN./SIM. BILLS:** SB 1128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee		Hogge	Hogge
2) Business Regulation Committee			
3) Judiciary Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

The bill would require the Supreme Court to establish minimum standards and procedures for court interpreters. These would cover qualifications, certification, professional conduct, discipline, and training. It would also permit the Supreme Court to charge fees to applicants seeking to become certified or renew their certification as a court interpreter. These revenues would be used to partially offset the costs of administering the certification program and performing other related responsibilities. The Supreme Court would be authorized to appoint or employ personnel to assist the court in administering these responsibilities.

Currently, the Supreme Court is authorized to establish analogous standards and procedures for court reporters and for mediators and arbitrators similar to those proposed in this bill for court interpreters, but with two primary differences: one, in the court reporter program, the Supreme Court *must* impose fees, whereas for the proposed court interpreter program and the mediators/arbitrators program it is *discretionary*; and two, the fees imposed in the court reporter program must be in an amount sufficient to *fully*, not just *partially*, fund the cost of administering the certification program. The mediator/arbitrator program makes no distinction between full or partial funding. In 2003, the Legislature repealed the provision granting fee authority to the Supreme Court for the court reporter program, only to restore it in 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill implicates the following House Principle—

Provide limited government. The bill authorizes the creation of a new program for certifying, training, and disciplining court interpreters. It specifically authorizes the Supreme Court to employ necessary staff to administer the program.

Ensure lower taxes. The bill authorizes the Supreme Court to impose fees to partially fund the court interpreter certification program and other responsibilities authorized in the bill.

B. EFFECT OF PROPOSED CHANGES:

Proposed changes

The bill would require the Supreme Court to establish minimum standards and procedures for court interpreters. These would cover qualifications, certification, professional conduct, discipline, and training. It would also permit the Supreme Court to charge fees to applicants seeking to become certified or renew their certification as a court interpreter. These revenues would be used to partially offset the costs of administering the certification program. The Supreme Court would be authorized to appoint or employ personnel to assist the court in administering these responsibilities.

Currently, the Supreme Court is authorized to establish analogous standards and procedures for court reporters and for mediators and arbitrators similar to those proposed in this bill for court interpreters, but with two primary differences: one, in the court reporter program, the Supreme Court *must* impose fees, whereas for the proposed court interpreter program and the mediators/arbitrators program it is *discretionary*; and two, the fees imposed in the court reporter program must be in an amount sufficient to *fully*, not just *partially*, fund the cost of administering the certification program. The mediator/arbitrator program makes no distinction between full or partial funding. In 2003, the Legislature repealed the provision granting fee authority to the Supreme Court for the court reporter program, only to restore it in 2004.

Background

Courts have determined that indigent defendants have a constitutional right to a court interpreter when a fundamental interest is at stake. Implicated are the due process, equal protection, and confrontation clauses of both the federal and Florida constitutions. Additionally, in Florida, the access to courts provision is also implicated.[1] Judges have broad discretion to determine whether or not an interpreter is necessary in a particular case. By statute, the Legislature requires a judge to appoint an interpreter when the judge determines that a witness cannot hear or understand the English language or cannot express himself or herself in English sufficiently to be understood.[2] Generally, it is thought that the appointment of an interpreter serves to protect the rights of parties; assists in creating an English-language record; and facilitates the fair and efficient administration of justice.

Florida statutory law does not include standards for those serving as court interpreters and makes no provision for their certification and training. According to the Supreme Court Interpreter's Committee, Florida courts differ in the way in which they manage, regulate, and coordinate court interpreter

[1] Fla. Const. art. I, s. 21.
[2] Fla. Stat. 90.606(1)(a) (2005)

services.[3] The State courts system has developed a voluntary statewide program to assist trial court administrators in assessing the qualifications of foreign language court interpreters, including the use of qualifications examinations and an orientation program with an overview of the Code of Professional Responsibility. Additionally, as a member of the Consortium for State Court Interpreter Certification, Florida has access to standardized testing instruments, among other services and products. Interpreters passing the standardized test and attending the orientation program qualify for inclusion on the Registry of Tested Court Interpreters.

C. SECTION DIRECTORY:

Section 1 creates the court interpreter certification program and authorizes the Supreme Court to charge fees and employ staff for this purpose.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Positive, but indeterminate because the specific fee amount has not yet been established by the Supreme Court.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Court interpreters may be subject to payment of fees for certification.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

[3] Supreme Court Interpreter's Committee, Report and Recommendations 7 (October 2003).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify whether it applies to foreign language court interpreters, sign language court interpreters, or both. It also does not indicate whether or not it includes foreign language translators. If the intent of the sponsor is to limit this to foreign language court interpreters or to include translators, the bill would benefit from an amendment.

The bill also provides that fee revenues shall be used to partially offset program costs. It is unclear whether or not that means that fees may be set at less than the cost to provide the service or that the revenues generated from the fees may be used for other programs not contemplated in the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to regulation of court interpreters; requiring the Supreme Court to establish standards and procedures for qualifications, certification, conduct, discipline, and training of appointed court interpreters; authorizing the Supreme Court to set fees for certification applications; specifying the use and deposit of such fees; authorizing the Supreme Court to appoint or employ personnel for certain administration assistance purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of court interpreters who are appointed by a court of competent jurisdiction. The Supreme Court may set fees to be charged to applicants for certification and renewal of certification as a court interpreter. The revenues generated from such fees shall be used to partially offset the costs of administration of the certification program and shall be deposited into the Grants and Donations Trust Fund within the state courts system. The Supreme Court may appoint or employ such personnel as is necessary to assist the court in administering this section.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1099 Court Actions Involving Families
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 2726

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee		Thomas	Hogge
2) Future of Florida's Families Committee			
3) Judiciary Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

The bill provides additional purposes regarding the implementation of a unified family court program in the circuit courts. These additional purposes are being added to chapter 39, F.S., pertaining to proceedings relating to children, chapter 61, F.S., pertaining to dissolution of marriage, support, and custody, and chapter 985, F.S., pertaining to the juvenile justice system. The additional purposes include:

- to provide children and families with a coordinated judicial system that minimizes multiple actions and provides one decisionmaker and a coordinated approach in dealing with the applicable issues of the child or family.
- to encourage the circuit courts to implement and establish a unified family court program by local rule or administrative order to be submitted to the Florida Supreme Court for approval as directed by the Florida Supreme Court.
- to improve the resolution of disputes within the judicial system for children and families by promoting the implementation of the Coordinated Management Model as established by the Florida Supreme Court and the concept of "one family, one judge" to coordinate multiple cases involving one family.

Last year, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system These recommendations were to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

The bill takes effect on July 1, 2006.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The unified family court system concept has the potential to avoid or at least reduce the number of conflicting orders relating to the same family and prevent multiple court appearances by the same family on the same issues. This may serve to reduce the number of hearings and therefore maximize judicial resources. This bill further implements that concept.

B. EFFECT OF PROPOSED CHANGES:

Background

Last year, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system.[1] These recommendations were to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

Florida's initiative for a unified family court reform began as a result of increasing demands being placed on the judicial system by the large volume of cases involving children and families. As the number of family court filings significantly increases, the Supreme Court has noted that it must seek to improve productivity and conserve resources.[2] Against this background, the Court created the Family Court Steering Committee in 1994 to, among other things, advise the Court about the circuits' responses to families in litigation and make recommendations on the characteristics of a model family court.[3]

In 2002, a joint interim project was conducted by the Senate Committee on Judiciary and the Senate Committee on Children and Families. Several recommendations for statutory change were included in the report. One such change was to allow the use of a unique personal identification for people who come before the court.[4]

Under current law, legal issues involving children and families are frequently addressed by different divisions of the court, particularly in larger judicial circuits. In many cases, the parties are appearing before a different judge in each proceeding. Therefore, it is possible that a judge may be unaware of previous or pending related legal matters involving the same children or family before the court.

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[1] Chapter 2005-239, L.O.F.

[2] See *In Re Report of the Family Court Steering Committee, 794 So.2d 518 (Fla. 2001)*. The court, at p.520, reports that as of 1998 and 1999, family law cases constituted the largest percentage of all circuit court filings – over 40%. The court also reported that for this same period, these cases overwhelmingly represented the largest percentage of circuit court cases that were reopened - almost 70%.

[3] See *In Re Report of the Commission on Family Courts, 633 So.2d 14 (Fla. 1994)*.

[4] See Senate Interim Project Report 2002-141, Review of Family Courts Division and the Model Family Court: Court Services and System, and Senate Interim Project Report 2002-121, Review of Family Courts Division and the Model Family Court: Other Services and Systems for Children and Families.

Effect of Proposed Changes

The bill provides additional purposes regarding the implementation of a unified family court program in the circuit courts. These additional purposes are being added to chapter 39, F.S., pertaining to proceedings relating to children, chapter 61, F.S., pertaining to dissolution of marriage, support, and custody, and chapter 985, F.S., pertaining to the juvenile justice system. The additional purposes include:

- to provide children and families with a coordinated judicial system that minimizes multiple actions and provides one decisionmaker and a coordinated approach in dealing with the applicable issues of the child or family.

- to encourage the circuit courts to implement and establish a unified family court program by local rule or administrative order to be submitted to the Florida Supreme Court for approval as directed by the Florida Supreme Court.

- to improve the resolution of disputes within the judicial system for children and families by promoting the implementation of the Coordinated Management Model as established by the Florida Supreme Court and the concept of "one family, one judge" to coordinate multiple cases involving one family.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.001, F.S., relating to the purposes of the chapter in Florida Statutes pertaining to proceedings relating to children.

Section 2. Amends s. 61.001, F.S., relating to the purposes of the chapter in Florida Statutes pertaining to dissolution of marriage, support, and custody.

Section 3. Amends s. 985.02, F.S., relating to the purposes of the chapter in Florida Statutes pertaining to the juvenile justice system.

Section 4. Provides that the bill becomes effective on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "D. Fiscal Comments" below.

D. FISCAL COMMENTS:

The unified family court system concept has the potential to avoid or at least reduce the number of conflicting orders relating to the same family and prevent multiple court appearances by the same family on the same issues. This may serve to reduce the number of hearings and therefore maximize judicial resources. This bill further implements that concept.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Though the provisions of the bill are non-substantive, placing identical language in multiple places in Florida Statutes may make it difficult in the future to maintain consistency should these provisions ever need to be rewritten.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to court actions involving families; amending ss. 39.001, 61.001, and 985.02, F.S.; providing additional purposes relating to implementing a unified family court program in the circuit courts; providing legislative intent; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (n) is added to subsection (1) of section 39.001, Florida Statutes, to read:

39.001 Purposes and intent; personnel standards and screening.--

(1) PURPOSES OF CHAPTER.--The purposes of this chapter are:

(n) To provide all children and families affected by the legal process with a coordinated judicial system that minimizes multiple actions and provides one decisionmaker for each child or family and a coordinated approach in dealing with the applicable issues of the child or family. It is the intent of the Legislature to encourage the circuit courts of this state to implement a unified family court program as endorsed by the Florida Supreme Court and establish such a unified family court by local rule or administrative order to be submitted to the Florida Supreme Court for approval as directed by the Florida Supreme Court. It is the intent of the Legislature to improve the resolution of disputes within the judicial system for children and families by promoting the implementation of the

Coordinated Management Model as established by the Florida Supreme Court and the concept of "one family, one judge" to coordinate multiple cases involving one family.

Section 2. Section 61.001, Florida Statutes, is amended to read:

61.001 Purpose of chapter.--

(1) This chapter shall be liberally construed and applied.

(2) Its purposes are:

(a) To preserve the integrity of marriage and to safeguard meaningful family relationships;

(b) To promote the amicable settlement of disputes that arise between parties to a marriage; and

(c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.

(d) To provide all children and families affected by the legal process with a coordinated judicial system that minimizes multiple actions and provides one decisionmaker for each child or family and a coordinated approach in dealing with the applicable issues of the child or family. It is the intent of the Legislature to encourage the circuit courts of this state to implement a unified family court program as endorsed by the Florida Supreme Court and establish such a unified family court by local rule or administrative order to be submitted to the Florida Supreme Court for approval as directed by the Florida Supreme Court. It is the intent of the Legislature to improve the resolution of disputes within the judicial system for children and families by promoting the implementation of the

Coordinated Management Model as established by the Florida Supreme Court and the concept of "one family, one judge" to coordinate multiple cases involving one family.

Section 3. Paragraph (j) is added to subsection (1) of section 985.02, Florida Statutes, to read:

985.02 Legislative intent for the juvenile justice system.--

(1) GENERAL PROTECTIONS FOR CHILDREN.--It is a purpose of the Legislature that the children of this state be provided with the following protections:

(j) To all children and their families affected by the legal process, a coordinated judicial system that minimizes multiple actions and provides one decisionmaker for each child or family and a coordinated approach in dealing with the applicable issues of the child or family. It is the intent of the Legislature to encourage the circuit courts of this state to implement a unified family court program as endorsed by the Florida Supreme Court and establish such a unified family court by local rule or administrative order to be submitted to the Florida Supreme Court for approval as directed by the Florida Supreme Court. It is the intent of the Legislature to improve the resolution of disputes within the judicial system for children and families by promoting the implementation of the Coordinated Management Model as established by the Florida Supreme Court and the concept of "one family, one judge" to coordinate multiple cases involving one family.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7019 PCB CJ 06-01 Mediation
SPONSOR(S): Civil Justice Committee
TIED BILLS: none **IDEN./SIM. BILLS:** SB 2188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Civil Justice Committee	7 Y, 0 N	Blalock	Bond
1) Judiciary Committee		Hogge	Hogge
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

In mediation, a trained intermediary assists parties to a dispute in reaching agreement. Courts often refer cases to mediation in order to assist the parties and to relieve docket congestion. In 2005, family court references in the statutes were changed to references to the unified family court model; however, mediation law was not correspondingly changed.

This PCB amends mediation law to conform to the unified family court model. This PCB also makes other technical and corrective changes to mediation law.

This PCB does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This PCB does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Mediation is a type of alternative dispute resolution used to resolve legal conflict between parties. Family law is one area where mediation has been widely used by the courts to assist parties in reaching agreement prior to trial. In mediation, parties involved in a dispute meet to work out their differences with the help of a mediator. The mediator assists and guides the parties toward their own solution by helping them to define the important issues and understand each other's interests. The mediator focuses each side on the crucial factors necessary for settlement and on the consequences of not settling. The mediator does not decide the outcome of the case and cannot compel the parties to settle.

In 2005, the Florida Legislature passed SB 348, which in part created s. 25.375, F.S. Section 25.375, F.S., authorizes the Supreme Court to adopt a unified family court model. The unified family court model utilizes a unified system of judicial case coordination in the state to identify cases relating to individuals and families. Individuals and families are assigned to a single circuit court judge that handles all of their cases dealing with family law matters. This model alleviates the problem of having different judges presiding over one family's various family law cases. The purpose is to reduce confusion and avoid conflicting court orders.

The act creating the unified family court system did not make corresponding changes to related statutes pertaining to mediation.

Effect of the PCB

This PCB redefines mediation in chapter 44, F.S., to provide for mediation in the unified family court. This PCB reflects the changes created by the passage in 2005 of s. 25.375, F.S., which created the unified family court system.

This PCB amends s. 44.1011, F.S., to create a definition for "unified family court mediation". "Unified family court mediation" means mediation of any of the following circuit court matters:

- Dissolution of marriage.
- Division and distribution of property arising out of a dissolution of marriage.
- Annulment.
- Support unconnected with dissolution of marriage.
- Paternity.
- Child support.
- The Uniform Reciprocal Enforcement of Support Act and the Uniform Interstate Family Support Act.
- Custodial care of and access to children.
- Adoption.
- Name changes.
- Declaratory judgment actions related to premarital, marital, or postmarital agreements.
- Civil domestic, repeat, sexual, or dating violence injunctions.
- Juvenile dependency.

- Termination of parental rights.
- Juvenile delinquency.
- Emancipation of a minor.
- Children in need of services.
- Families in need of services.
- Truancy.
- Modification and enforcement of orders entered in these cases.

This PCB also amends s. 44.1011, F.S., to remove the definitions for "family mediation" and "dependency or in need of service mediation".

This PCB creates s. 44.1015, F.S. The new section contains substantive law regarding the scope and content of mediation currently in s. 44.1011, F.S. (definitions applicable to ch. 44, F.S.).

This PCB amends s. 44.102, F.S., to provide that a court must refer to mediation matters that involve disputed custody, visitation, or other parental responsibility issues. However, a court must not refer to mediation, regardless of any other law, any case dealing with domestic violence, dating violence, or sexual violence injunctions, except pursuant to rules adopted by the Supreme Court of Florida. This PCB also provides that a court must not refer to mediation any case where the court finds that there has been a history of violence which would compromise the mediation process or endanger any person's safety.

This PCB provides that the Supreme Court is responsible for maintaining a list of certified mediators instead of the chief judge of each judicial circuit. This change reflects current practice.

This PCB amends s. 44.108, F.S., related to fees for mediation services. The PCB changes responsibility for payment from each "person" in a case to each "party".

Section 61.183(1), F.S., provides that a court may refer to mediation any proceeding in which the issues of parental responsibility, primary residence, visitation, or support of a child are contested. However, s. 44.102, F.S., provides that a court must refer to mediation disputed custody, visitation, or other parental responsibility issues. This PCB amends s. 61.183, F.S., to conform to s. 44.102, F.S., requiring that a court refer to mediation cases where the issue of parental responsibility, primary residence, visitation, or support of a child is contested.

C. SECTION DIRECTORY:

Section 1 amends s. 44.1011, F.S., to revise definitions applicable to mediation.

Section 2 creates s. 44.1015, F.S., to provide for conduct of mediation.

Section 3 amends s. 44.102, F.S., to provide when a court must refer cases to mediation and when the courts must not refer cases to mediation.

Section 4 amends s. 44.108, F.S., to provide fee provisions related to mediation.

Section 5 amends s. 61.183, F.S., to require mediation in certain family law cases and provide conformity with section 44.102(c), F.S.

Section 6 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Dispute Resolution Center provided the following fiscal comment:

> "Under current law, the only mediation cases for which fees can be charged are county court cases above small claims and "family" cases as currently defined in 44.1011(c). Dependency cases (and other cases which would be under the umbrella of the unified family court) currently are exempt from mediation fees. Thus, the changes as proposed would continue existing law and is only necessitated because of redefining "family" and "dependency" mediation in terms of "unified family court" in section 44.1011."[1]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This PCB does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[1] Correspondence from Sharon Press, Director of the Florida Dispute Resolution Center, dated December 12, 2005.

A bill to be entitled

An act relating to mediation; amending s. 44.1011, F.S.; revising, creating, and deleting definitions; creating s. 44.1015, F.S.; providing standards for conduct of mediation; providing for the role of the mediator and counsel in specified mediations; amending s. 44.102, F.S.; requiring referral of certain cases to mediation; prohibiting certain cases from being referred to mediation; requiring the Supreme Court to maintain a list of certified mediators; amending s. 44.108, F.S.; providing that no mediation fee is required in certain cases; amending s. 61.183, F.S.; requiring mediation in certain family law cases; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 44.1011, Florida Statutes, is amended to read:

44.1011 Definitions.--As used in this chapter:

(2) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process in which decisionmaking authority rests with the parties with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. ~~In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint~~

~~problem solving, and exploring settlement alternatives.~~

"Mediation" includes:

(a) "Appellate court mediation," which means mediation that occurs during the pendency of an appeal of a civil case.

(b) "Circuit court mediation," which means mediation of civil cases, other than unified family court matters, in circuit court. ~~If a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.~~

(c) "County court mediation," which means mediation of civil cases within the jurisdiction of county courts, including small claims. ~~Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required.~~

(d) "Unified family court mediation," which means mediation of any of the following circuit matters or any combination thereof:

1. Dissolution of marriage.

2. Division and distribution of property arising out of a dissolution of marriage.

3. Annulment.

4. Support unconnected with dissolution of marriage.

5. Paternity.

6. Child support.

7. The Uniform Reciprocal Enforcement of Support Act and the Uniform Interstate Family Support Act.

8. Custodial care of and access to children.

9. Adoption.

10. Name changes.

11. Declaratory judgment actions related to premarital, marital, or postmarital agreements.

12. Civil domestic, repeat, sexual, or dating violence injunctions.

13. Child dependency.

14. Termination of parental rights.

15. Juvenile delinquency.

16. Emancipation of a minor.

17. Children in need of services.

18. Families in need of services.

19. Truancy.

20. Modification and enforcement of orders entered in matters listed in this paragraph.

~~(d) "Family mediation" which means mediation of family matters, including married and unmarried persons, before and after judgments involving dissolution of marriage; property division; shared or sole parental responsibility; or child support, custody, and visitation involving emotional or financial considerations not usually present in other circuit civil cases. Negotiations in family mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required, and, in the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.~~

~~(e) "Dependency or in need of services mediation," which means mediation of dependency, child in need of services, or family in need of services matters. Negotiations in dependency or in need of services mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required and, in the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.~~

Section 2. Section 44.1015, Florida Statutes, is created to read:

44.1015 Conduct of mediation.--

(1) The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(2) Legal counsel may be involved in mediation as follows:

(a) In circuit court mediation, if a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.

(b) In unified family court mediation, negotiations are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with his or her clients. However, in the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(c) In county court mediation, negotiations are primarily conducted by the parties. Counsel for each party may

participate. However, presence of counsel is not required in actions under the Florida Small Claims Rules.

Section 3. Subsections (2) and (4) of section 44.102, Florida Statutes, are amended to read:

44.102 Court-ordered mediation.--

(2) A court, under rules adopted by the Supreme Court:

(a) Shall ~~Must~~, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless:

1. The action is a landlord and tenant dispute that does not include a claim for personal injury.

2. The action is filed for the purpose of collecting a debt.

3. The action is a claim of medical malpractice.

4. The action is governed by the Florida Small Claims Rules.

5. The court determines that the action is proper for referral to nonbinding arbitration under this chapter.

6. The parties have agreed to binding arbitration.

7. The parties have agreed to an expedited trial pursuant to s. 45.075.

8. The parties have agreed to voluntary trial resolution pursuant to s. 44.104.

(b) Shall, in circuits in which a mediation program has been established, refer to mediation all or part of disputed custody, visitation, or other parental responsibility issues.

(c) ~~(b)~~ May refer to mediation all or ~~any~~ part of any ~~a~~ filed case ~~civil action~~ for which mediation is not required under this section.

(d) Shall not refer to mediation, regardless of any other law requiring mediation:

1. Any case regarding issuance of domestic, repeat, dating, or sexual violence injunctions, except to the extent authorized by rules adopted by the Supreme Court; or

2. Any case in which the court finds, upon motion or request of a party, there has been a history of violence, including, but not limited to, domestic violence, that would compromise the mediation process or endanger any person's safety.

~~(c) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.~~

~~(d) In circuits in which a dependency or in need of services mediation program has been established, may refer to mediation all or any portion of a matter relating to dependency or to a child in need of services or a family in need of services.~~

(4) The Supreme Court ~~chief judge of each judicial circuit~~ shall maintain a list for each circuit of mediators whom it has

~~who have been~~ certified ~~by the Supreme Court~~ and who have registered for appointment in that circuit.

(a) Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed. If a mediation program is funded pursuant to s. 44.108, volunteer mediators shall be entitled to reimbursement pursuant to s. 112.061 for all actual expenses necessitated by service as a mediator.

(b) Nonvolunteer mediators shall be compensated according to rules adopted by the Supreme Court. If a mediation program is funded pursuant to s. 44.108, a mediator may be compensated by the state, the county, or ~~by~~ the parties.

Section 4. Subsection (2) of section 44.108, Florida Statutes, is amended to read:

44.108 Funding of mediation and arbitration.--

(2) When court-ordered mediation services are provided by a circuit court's mediation program, the following fees, unless otherwise established in the General Appropriations Act, shall be collected by the clerk of court:

(a) Eighty dollars per party ~~person~~ per scheduled session in unified family court mediation when the parties' combined income is greater than $50,000, but less than $100,000 per year;

(b) Forty dollars per party ~~person~~ per scheduled session in unified family court mediation when the parties' combined income is less than $50,000; or

(c) Forty dollars per party ~~person~~ per scheduled session in county court cases.

No mediation fees shall be assessed under this subsection in residential eviction cases, against a party found to be indigent, or for any small claims action. No mediation fees shall be assessed under this subsection in unified family court cases that are limited to one or more of the following issues: child dependency, children in need of services, families in need of services, juvenile delinquency, or issues arising out of judicial findings in relation to injunctions for protection against domestic violence. Fees collected by the clerk of court pursuant to this section shall be remitted to the Department of Revenue for deposit into the state courts' Mediation and Arbitration Trust Fund to fund court-ordered mediation. The clerk of court may deduct $1 per fee assessment for processing this fee. The clerk of the court shall submit to the chief judge of the circuit, no later than 30 days after the end of each quarter, a report specifying the amount of funds collected under this section during each quarter of the fiscal year.

Section 5. Subsection (1) of section 61.183, Florida Statutes, is amended to read:

61.183 Mediation of certain contested issues.--

(1) In any proceeding in which the issues of parental responsibility, primary residence, visitation, or support of a child are contested, the court shall ~~may~~ refer the parties to mediation in accordance with s. 44.102 ~~rules promulgated by the Supreme Court~~. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after

the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees.

Section 6. This act shall take effect July 1, 2006.